

FILED

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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARITO GONZALEZ ALDANA,

Petitioner - Appellant,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent - Appellee.

No. 05-15617

D.C. No. CV-04-05355-MMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Argued and Submitted April 5, 2006
San Francisco, California

Before: SILER,^{**} and RAWLINSON, and BYBEE, Circuit Judges.

The facts are known to the parties.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

By its own terms, waiver of inadmissibility under § 212(c) of the Immigration and Nationality Act was available only for “[a]liens *lawfully admitted for permanent residence* who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a *lawful unrelinquished domicile of seven consecutive years . . .*” 8 U.S.C. § 1182(c) (repealed 1996) (emphasis added). At the time of his no contest plea, Aldana was a temporary resident under the Special Agricultural Workers (“SAW”) program, 8 U.S.C. § 1160 (2000), who had acquired scarcely five months of lawful domicile. Thus, § 212(c) relief was unavailable to Aldana when he entered his plea of no contest.

In determining that § 212(c) relief remains available for certain aliens following its repeal, the Supreme Court did not expand the availability of such relief beyond the former section’s strictures. *See INS v. St. Cyr*, 533 U.S. 289 (2001). Rather, the Court explicitly limited the continuing availability of such relief to those aliens who qualified for § 212(c) relief at the time they entered their pleas. *See id.* at 326 (“We therefore hold that § 212(c) relief remains available for aliens, like respondent, whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief *at the time of their plea* under the law then in effect.” (emphasis added)). *See also United States v. Leon-Paz*, 340 F.3d 1003, 1006-07 (9th Cir. 2003)

(finding § 212(c) relief remained available to an alien who otherwise qualified for such relief at the time he entered his guilty plea to a nonremovable offense which Congress subsequently reclassified as a removable offense). Accordingly, Aldana's petition is DENIED.